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Rebotix Repair LLC v Intuitive Surgical, Inc.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

REBOTIX REPAIR LLC,
Plaintiff,

CIVIL ACTION FILE

vs.

NO. 8:20-cv-02274

INTUITIVE SURGICAL, INC.,
Defendant.

CONFIDENTIAL ATTORNEYS' EYES ONLY

30(b)(6) VIDEO DEPOSITION OF
REBOTIX REPAIR, LLC through
GLENN PAPIT
TAKEN BY REMOTE VIDEOCONFERENCE
June 2, 2021
10:06 a.m.
St. Petersburg, Florida

Robyn Bosworth, RPR, CRR, CRC, CCR-B-2138

1 ask that.

2 Q I appreciate that.

3 When you started working at Rebotix, what
4 countries did the country -- what countries did the
5 company operate in?

6 A Rebotix, when we began, was moved to
7 Panama, as I believe you probably -- we shared that
8 with you. And at that point, we were operating in
9 Italy, France, Poland, Ukraine, Russia, and the UK.
10 If memory serves me, I think that's correct.

11 Q When was Rebotix moved to Panama?

12 A Around 2016, I believe.

13 Q Rebotix Panama is a separate company from
14 Rebotix, right?

15 A That's correct. It was established there.

16 Q Why was Rebotix Panama established?

17 A Well, we were going to reach out to the
18 international market. It's a massive market. We
19 had established what we thought the US market was,
20 so we needed a place that is standardly accepted as
21 a location for an international company, and Panama
22 certainly has that reputation, shipping, delivering,
23 a lot of international companies base there. And
24 Stan also has -- his wife has relatives there, so we
25 knew we could have someone find us a building for an

1 office down there. So it just made business sense,
2 let's set it up there and go to Europe with it from
3 there.

4 Q Any other reasons that you recall for why
5 Rebotix Panama was formed?

6 A I'm sure that the tax situation is not
7 worse than it is here, so that was probably
8 acceptable. Other than that, I'd have to think long
9 and hard. I'm going back years for these decisions,
10 and primarily it was for the international business.

11 Q Is the business in Panama regulated by the
12 FDA, to your understanding?

13 A My understanding is I don't think the FDA
14 regulates anywhere outside of the United States.

15 Q What types of products or services did
16 Rebotix Panama offer to customers?

17 A The same service that Rebotix offered.

18 Q And was Rebotix Panama's services limited
19 to EndoWrist service and reset of the usage counter?

20 A Yes.

21 Q Were EndoWrists from United States
22 customers serviced by Rebotix Panama?

23 A No.

24 Q Have you ever visited the facility in
25 Panama?

1 raised the question of whether a 510(k) was
2 necessary, and that would be discussed and explained
3 to them.

4 BY MS. LENT:

5 Q You said earlier that the Interceptor
6 usage counter reset is only available for the
7 EndoWrist for the S and Si da Vincis; is that right?

8 A Yes.

9 Q And they're not available for the X or the
10 Xi, correct?

11 A Correct.

12 Q Why is that?

13 A Because they're different signal sets.

14 Q Is Rebotix trying to make an Interceptor
15 for the usage counter on an EndoWrist for an X or
16 Xi?

17 A Yes.

18 Q Has it -- has Rebotix been able to develop
19 that technology?

20 A It's in process. You would get an answer
21 from Stan that would be much more accurate.

22 Q But your understanding is that the
23 technology hasn't yet been developed, right?

24 A My understanding is it hasn't been
25 completed.

1 meetings?

2 A I was not.

3 Q Did you get the impression that the
4 customers thought that you were vouching for him?

5 A It could be a logical assumption if the
6 two of us are in the same meeting with a customer.

7 Q So based on his -- Clif's failure to tell
8 you what he could and couldn't do with respect to
9 the robots, you believe that he overpromised; is
10 that right?

11 A Correct.

12 Q Is that one of the reasons why Rebotix
13 stopped doing business with Restore?

14 A We discontinued the relationship because
15 of a lack of performance.

16 Q So Rebotix's agreement with Restore is no
17 longer in place; is that right?

18 A That's correct.

19 Q When did the relationship end?

20 A I'm going to say second quarter of 2019
21 would be my guess.

22 Q Once the relationship between Rebotix and
23 Restore was terminated, did Rebotix's agreement
24 require Restore to return any of Rebotix's
25 confidential or proprietary information?

1 A The limited number of uses is returned to
2 the same number of uses following the repair.

3 Q So as long as you don't reset the counter
4 to more than the original number of uses, you're not
5 altering the intended use; is that your testimony?

6 A My testimony is that if it's a 10-use
7 instrument, you can only reset it for 10
8 instrument -- 10 uses.

9 Q And if you reset it for more, you would be
10 altering the intended use?

11 MR. LYON: Objection to form.

12 THE WITNESS: We would be altering the
13 proper way to repair the instrument.

14 BY MS. LENT:

15 Q What is the proper way to repair the
16 instrument?

17 A To go through the specs which have been
18 discovered, to inspect the instrument, to repair the
19 instrument, to reset the instrument, to validate the
20 inspection, and return it to the customer in its
21 proper form and function.

22 Q And who determines what's the proper form
23 and function?

24 A The specialists that we use through a
25 four-year process of every conceivable measurement,

1 BY MS. LENT:

2 Q Is that what you were doing at that trade
3 show, trying to find out whether Intuitive performed
4 testing on the number of uses for EndoWrist?

5 A No, we were at the trade show for
6 marketing purposes, but they happened to be across
7 the aisle from us, and they happened to come over to
8 our booth, so I spoke with them.

9 Q And did you ask them if they had performed
10 testing to determine the number of useful lives for
11 the EndoWrist?

12 A I had no reason to ask them that.

13 Q Well, you were willing to call the limits
14 arbitrary without asking them?

15 A "Arbitrary" was established based on what
16 I previously said that I know they use those
17 EndoWrists a hundred times and then told customers
18 they could only be used 10 times. To me that's
19 arbitrary.

20 Q The document goes on to say: This forced
21 obsolescence is not supported by FDA approval
22 policy.

23 Do you see that?

24 A Yes, I do.

25 Q What did you mean by that?

1 A I mean the FDA did not require that they
2 limit their use to 10 uses or 15 uses. The FDA has
3 two categories of approval: Single-use medical
4 device or multi-use medical device.

5 Q What FDA-approved policy are you
6 referencing?

7 A I can't quote it to you. I just know, and
8 it's common knowledge in the marketplace, that there
9 are two approval settings, single and multi.

10 Q So was it your understanding that
11 multi-use products can be used indefinitely?

12 A Multiple-use products are qualified as
13 anything that's not single use; they're used more
14 than once.

15 Q So they are qualified to be used
16 indefinitely?

17 A That is the determination of the hospital
18 that uses them and has always been so.

19 Q And this Hospital Right to Repair document
20 is something that you sent to prospective customers,
21 right?

22 A Yes, we did.

23 Q Okay.

24 MS. LENT: I'd like to introduce tab 81
25 next, but not with the cover e-mail, so I think Doug

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1 A Honestly don't remember. I don't know.
2 I'd have to look and see on that too.

3 Q Was there a time when Rebotix's position
4 was that it wouldn't initiate production on
5 EndoWrists or ship remanufactured EndoWrists back to
6 customers without 510(k) clearance from the FDA?

7 A Please repeat that. I didn't get the
8 first part of it.

9 Q Yeah. I'm asking whether there was a time
10 when Rebotix's position was that it wouldn't ship
11 remanufactured EndoWrists back to customers without
12 510 clearance from the FDA.

13 MR. LYON: Objection to form.

14 THE WITNESS: Early on when we were
15 deciding on the business model, we did not know if
16 we wanted to repair these instruments and return
17 them to the owning customer or if we wanted to
18 refurbish these instruments and sell them, so we
19 investigated both avenues, one that would require a
20 510(k), and one that would not. So there were times
21 when we discussed this at length.

22 BY MS. LENT:

23 Q When I asked you this morning whether
24 Rebotix had ever considered repairing and resetting
25 the instrument counter and selling the repaired

1 Q I just asked you -- I just said: In the
2 time period when Rebotix LLC was in existence,
3 Rebotix LLC was considering repairing EndoWrists and
4 resetting the usage counter and then selling them to
5 hospitals other than the one that provided the
6 EndoWrist in the first place. What is the
7 distinction you are trying to draw with your "no"
8 answer?

9 A I was referring -- I thought you were
10 referring to presently. If I misunderstood you --

11 Q No.

12 A -- apology.

13 Q No.

14 A Earlier on we looked at both options.

15 Q So what -- so the difference between the
16 option of -- that Rebotix LLC was considering and
17 getting 510(k) approval for and what Rebotix
18 ultimately did is that you just returned the
19 instrument to the hospital that sent it to you as
20 opposed to selling it to someone else, right?

21 MR. LYON: Objection, form.

22 THE WITNESS: We repair the instrument
23 versus remanufacturing the instrument and selling it
24 to whomever we wish.

25 BY MS. LENT:

1 Q What distinction are you making between
2 repair and remanufacturing in that answer?

3 A The primary distinction is that we're --
4 in repair you're not reselling it; you're returning
5 it to its owner. In remanufacturing you can sell
6 it.

7 Q Okay. So is there any other difference
8 that you're trying to draw other than whether the
9 instrument is returned to the original hospital or
10 sold to a different entity?

11 MR. LYON: Objection to form.

12 THE WITNESS: The other consideration is
13 the reason that we struggled with that answer
14 because we had an instrument that was multi-use with
15 a 510(k), and there's no such category in the FDA,
16 so it was a confusing time for us to try to
17 understand what we were doing.

18 BY MS. LENT:

19 Q So I just want you to focus on the
20 question that I'm asking because I'm trying to
21 figure out the difference between these two business
22 models that Rebotix LLC was considering back in 2011
23 when the company was formed.

24 It sounds to me like the only difference
25 between what you were thinking about doing is

1 whether you would sell the instrument to a third
2 party after you reset the counter and repaired it or
3 whether you would just return it to the hospital
4 that gave it to you for repair and reset; is that
5 correct?

6 MR. LYON: Objection to form.

7 THE WITNESS: Plus we would apply for and
8 obtain a 510(k) to do the first one.

9 BY MS. LENT:

10 Q Yeah, I'm not asking you about what
11 regulatory requirements there would be. I'm just
12 talking about the business model itself.

13 A The business model would basically be
14 selling versus repairing.

15 Q But you're doing the same thing in both
16 instances, right? You're repairing and resetting
17 the usage counter --

18 MR. LYON: Objection to form.

19 BY MS. LENT:

20 Q -- and then the difference is who pays for
21 that, is it the hospital that gave it to you and
22 you're giving it back to them or is it a different
23 entity, right?

24 MR. LYON: Objection to form.

25 THE WITNESS: We would be complying with

1 FDA regulations if we --

2 BY MS. LENT:

3 Q I'm not asking you about FDA regulations,
4 Mr. Papit. I'm not asking you about that at all.
5 Just listen to the question that I'm asking.

6 You were considering two different options
7 in 2011, right?

8 A For some time, not just 2011.

9 Q Okay. And during that period of time the
10 two options both involved repairing EndoWrists that
11 had achieved -- had been used nine times and
12 resetting the usage counter, correct?

13 A No, when you're reselling you're not
14 repairing an instrument. That is not how it's
15 categorized.

16 Q Okay. What physically --

17 A I cannot change -- I cannot change the FDA
18 regulation to suit the question you want it to fit.
19 I can't.

20 Q No, I'm not trying to talk about FDA
21 regulations. I'm trying to talk about what Rebotix
22 physically was going to do to an EndoWrist that was
23 shipped to them. What were you going to do to it?
24 In the situation where you were going to send it
25 back to the hospital that provided it to you, what

1 would you do?

2 MR. LYON: Objection to form.

3 THE WITNESS: We would remanufacture.

4 BY MS. LENT:

5 Q I don't want you to use the repair and
6 re -- these are loaded words. I'm just trying to
7 understand what --

8 A I'm trying to understand your questions.

9 MR. LYON: Glenn, don't talk unless
10 there's a question posed. No need to get in
11 back-and-forth arguing. You're both getting
12 argumentative. That's not what we're doing here.
13 Just let her ask a question, listen to the question,
14 if you understand the question, answer the question,
15 but don't get into back-and-forth arguments. That's
16 not what this is about.

17 THE WITNESS: Apology.

18 MS. LENT: Doug, is tab 80, is that
19 Exhibit 7?

20 MR. DEBAUGH: Yes.

21 MS. LENT: Can we pull that back up,
22 please?

23 MR. DEBAUGH: Sorry. One moment. Chris,
24 can you pull that up? I've been logged out.

25 CONCIERGE TECH: Absolutely.

1 MS. LENT: Okay. Let's -- can we go to
2 the page that ends in Bates number 473, please?
3 That's it, the flow chart. Can you scroll that up
4 so Mr. Papit can see the whole chart? Okay, great.
5 BY MS. LENT:

6 Q So, Mr. Papit, this is the process that
7 you told me Rebotix uses to repair and reset
8 EndoWrists, right?

9 A Correct.

10 Q And that's the process that Rebotix Repair
11 engages in, right?

12 A Correct.

13 Q Now, the other business model that Rebotix
14 LLC was considering was the same as this except the
15 bottom left box where it says instrument return
16 would say instrument sale; is that right?

17 MR. LYON: Objection to form.

18 THE WITNESS: That would be right if the
19 first box -- could you raise it up again, please?
20 Where it says incoming evaluation, that instrument
21 might be coming from places other than the one
22 hospital. It could be coming from multiple sources.

23 BY MS. LENT:

24 Q Sure, but you're still going to evaluate
25 the instrument when you -- the used instrument that

1 you receive, you would start the process by
2 evaluating it, right?

3 A Correct.

4 Q And you would go through all these same
5 steps, but then instead of returning it to the
6 hospital that provided it, you would sell it to some
7 other entity, correct?

8 A That is what we were looking at.

9 Q Okay, thank you. I'm sorry that took so
10 long. I did not mean to get -- to get frustrated.
11 I was just not being clear, but thank you for your
12 patience.

13 A Welcome. Thank you.

14 MR. LYON: I hate to be the one who
15 continually asks this, but maybe I'm drinking the
16 most coffee. If there's a moment anytime soon for
17 another very short break, Karen, that would be
18 great.

19 MS. LENT: Yeah, we can do that right now.

20 THE VIDEOGRAPHER: The time is now 5 p.m.
21 We're going off the record.

22 (Recess 5:00-5:11 p.m.)

23 THE VIDEOGRAPHER: The time is now 5:11
24 p.m. We're back on the record. Please continue.

25 MS. LENT: Thank you.

1 Can we please introduce tab 14 as the next
2 exhibit?

3 CONCIERGE TECH: Sure. Please stand by.
4 Tab 14 has been introduced as Papit Exhibit 14.

5 (Papit Exhibit 14 was marked for
6 identification.)

7 BY MS. LENT:

8 Q Mr. Papit, the top e-mail on this page
9 appears to be from you to Bob Overmars, Stan
10 Hamilton, and Chris Gibby on June 7th, 2018.

11 Do you see that?

12 A I do.

13 Q Who is Bob Overmars?

14 A Bob Overmars is the president of BPI
15 Medical.

16 Q What is BPI Medical?

17 A It's a combination repair shop, and they
18 do some contract work for major manufacturers to
19 make specific specialty pieces.

20 Q Was Rebotix Repairs doing business with
21 BPI Medical?

22 A Yes.

23 Q In what way?

24 A They're a distributor.

25 Q Okay. Who is Chris Gibby?

1 from you, and it doesn't indicate who you sent this
2 to. Do you have any idea who you sent this e-mail
3 to?

4 A If it's to the far northwest it was
5 probably Bob or his brother, Ben.

6 Q It says: Good morning, gentlemen.
7 Would that lead you to believe that you
8 sent it to more than one person?

9 A It could have been to both of them.

10 Q Okay. I want to look at the second
11 paragraph that starts: Just wanted to let you know
12 we are finally doing repairs, slash, count resets on
13 the da Vinci EndoWrist. We came to the conclusion
14 it is a repair and are proceeding accordingly.

15 Do you see that?

16 A Uh-huh.

17 Q When did you come to the conclusion that
18 it is a repair?

19 A Sometime prior to March 5th, 2018. Can't
20 give you an exact date.

21 Q Do you think that it was close in time to
22 March 5th, 2018?

23 A I honestly don't know. Probably logical.

24 Q I'm sorry, I didn't mean to cut you off.

25 A It probably was relatively close to that

CERTIFICATE

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.


I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

I have no relationship of interest in this matter which would disqualify me from maintaining my obligation of impartiality in compliance with the Code of Professional Ethics.

I have no direct contract with any party in this action and my compensation is based solely on the terms of my subcontractor agreement.

Nothing in the arrangements made for this proceeding impacts my absolute commitment to serve all parties as an impartial officer of the court.

This the 3rd day of June, 2021.



ROBYN BOSWORTH, RPR, CRR, CRC, CCR-B-2138